IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 480 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RAMESHBHAI DAHYABHAI HARIJAN

Appearance:

Mr.R.V. Desai, ASSTT GOVERNMENT PLEADER for Petitioner

MR MURALI N DEVNANI for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 16/08/2001

ORAL JUDGEMENT

Rule. Mr.Murli Devnani, learned advocate waives service of the rule. The present petition is filed against the judgement and award passed in Reference (LCA) No.620 of 1992, which had an old number being No.372 of 1989. The award came to be passed on 5.4.1999 allowing

the reference and ordering reinstatement of the workman with full back wages with consequential benefits. As is recorded in paras 4 and 5 of the said award that, "in spite of notices issued to the Government department, the acknowledgments of which were on record, nobody appeared before the Court in spite of having given number of opportunities". Therefore, the Labour Court on the basis of material before it passed the award. Thereafter, a Misc. Application came to be filed bearing No.25 of 1999 in Reference No.620 of 1992. The learned Judge while dealing with Misc. Application has recorded in para 4 that it was the contention on behalf of the present petitioner that the order passed in Reference No.620 of 1992 was received late therefore, the delay was caused in filing Restoration Application. It is further stated that the delay was caused on account of 'postal delay', that the restoration application was filed soonafter the order was received. It was also contended on behalf of the present petitioner that in the original reference there was another Government Pleader. Thereafter, there being a change in Government Pleader on account of new advocate, there was delay in conducting the matter and that as the original reference is not decided on merits with a view to give them an opportunity and to produce witnesses and evidence, the original reference be restored on file. The learned Judge after taking into consideration the contentions of both the sides has recorded in its order that he is in full agreement with the arguments advanced by Shri Jitubhai Shah, the representative of the respondent workman; that there being delay in filing restoration application, that as reasons are not demonstrated before the Court for the delay, that there being no prayer for condonation of delay, rejected the application for restoration by an order dated 11.9.2000.

2. Mr.R.V. Desai, learned Government Pleader submitted that this is a matter wherein the department being a Government Department on account of normal procedural aspects, delay has occurred. Therefore, the same is required to be condoned and the original reference is required to be decided on merits. The submission of Mr.Desai could have been accepted, but what deters the Court from accepting the same is that the reference is as old as of 1989, which came to be decided in the year 1999; that too on account of the Department being negligent, it was decided ex parte. Thereafter, restoration application was filed, but that too without there being any prayer for condonation of delay. In such circumstances, the order and the award of the court below warrants no interference at the hands of this Court.

However, on the other hand, it is equally true that the Government machinery functions through its officers, who have impersonal approach, but ultimately it is the public exchequer, which is going to suffer.

3. In light of the aforesaid discussion, it is deemed fit that the following directions be issued.

(i) The department shall hold an inquiry to find out the person who was at fault in allowing the reference getting decided ex parte. A copy of the inquiry report be placed on record of this case.

(ii) An amount of cost of Rs.10,000/-, (Rupees ten thousand only) should be paid by the Government to the respondent workman which is not to be adjusted towards any dues payable to the respondent.

(iii) A cost of Rs.10,000/-, (Rupees ten thousand only) which is awarded by this Court to the respondent workman shall be recovered from the person who is found to be at fault in the aforesaid inquiry.

(iv) Taking into consideration that the reference is as old as of 1989, the Labour Court is directed to decide the matter giving top priority. In any case the matter shall be decided within six months from the date of receipt of this order.

3. The petition is allowed to the aforesaid extent. The award and order of the Labour Court are hereby quashed and set aside and the matter is remanded to the Labour Court, Anand for deciding afresh on merits. Rule is made absolute accordingly.

(Ravi R. Tripathi, J.)

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